IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8819 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ STATE FERTILIZER CO LTD

Versus

CHHANI NAGAR PANCHAYAT

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Appearance:

MR KS NANAVATI for Petitioner

MR JAYANT PATEL for Respondent No. 1

MR KG SHETH, AGP for Respondent No. 2

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Articles 226 and 227 of the Constitution of India read with the provisions contained in the Bombay Land Revenue Code, 1879 and Gujarat Panchayat Act, 1961,

etc.

The petitioner is a company registered under the Companies Act 1956, having its Head Office at P.O. Fertilizer Nagar, District Vadodara.

Through this petition, the petitioner has challenged the order dated 13th July, 1990 passed by the Additional Development Commissioner, Gandhinagar in Revision Petition No.60 of 1989, whereby the said officer dismissed the said petition of the present petitioner.

The petitioner has also challenged the bills issued by the first respondent with regard to the property tax in respect of the property of the present petitioner.

The petitioner claims that the first respondent is a Nagar Panchayat of village Chhani constituted under the provision of Gujarat Panchayat Act, 1961, (hereinafter referred to as "Panchayat Act") and the property of the petitioner-company is situated in different parts of different villages, namely - Chhani, Bajwa, Dashrath and Karachhiya - all of Baroda Taluka. The aforesaid lands were acquired for the purposes of the petitioner-company and thereafter buildings have been constructed and factory has been installed on the said lands. That the State Government issued a notification under Section 7(A) of the Bombay Land Revenue Code, 1878 (for short "the Code"); that a new village Jawaharnagar was constituted. That the petitioner's lands are situated in the said newly constituted Jawaharnagar.

The petitioner was served with bills for the property tax by the first respondent, Chhani Nagar Panchayat. The petitioner claims that since the property of the petitioner is situated in the newly constituted Jawaharnagar, the petitioner is not responsible and liable to pay property tax to the first respondent. It has also been contended that the tax imposed is excessive and therefore, the first respondent is not entitled to recover the amount of tax shown in the bills issued to the petitioner.

It has also been contended that under notification dated 21st August, 1987, the entire Gujarat State Fertilizer Company Complex, consisting of factory and township, have been declared to be a "notified area" under the provisions of Section 16 of the Gujarat Industrial Development Act, 1962 and under Section 9(2) of the Gujarat Panchayats Act, 1961. That, therefore, on

and from that date the land of the petitioner does not fall within territorial jurisdiction of the first respondent and therefore, the first respondent is not entitled to recover property tax in respect of the property of the petitioner situated in the newly constituted notified area.

Anyway, the petitioner claims that the first respondent is not entitled or authorised to levy and collect property tax in respect of the aforesaid property of the petitioner on the aforesaid ground and therefore, the petitioner had challenged the aforesaid aspects of the case.

In fact, the matter was carried to the Additional Development Commissioner and as stated above, the Additional Development Commissioner had turned down the request of the petitioner and thereafter the petition has been filed by the petitioner for appropriate writ, order or direction for quashing and setting aside the impugned order dated 13th July, 1990 at Annexure "K" passed by the Additional Development Commissioner, State of Gujarat at Gandhinagar. The petitioner has further prayed for appropriate writ, order or direction for quashing and setting aside the impugned tax bills at Annexure "J" issued by the first respondent.

At the first instance, Chhani Nagar Panchayat was only joined as respondent, but thereafter the petitioner amended the petition and joined the State of Gujarat as also respondent.

It appears from the record that notice was issued to the first respondent. Thereafter, by order dated 15th January, 1991 rule was issued and Ad-interim order was granted in terms of para 13(C) of the petition.

The first respondent appeared before the Court and filed affidavit of Shantibhai Shankerbhai Patel, who happens to be the Sabhapati of the first respondent. The affidavit has been filed at page 79 onwards.

The respondent has denied the allegations made in the petition and contended that though Jawaharnagar may be constituted to be a separate village under the said Code, neverthless new Gram or village has not been constituted under the provisions of the Panchayat Act. That so far the Panchayat Act is concerned, Jawaharnagar is still a part and parcel of Chhani Nagar Village and therefore, the property situated in Jawaharnagar is liable to be taxed for the purpose of property tax and

the occupants and owners of such properties are liable to pay property tax in respect of the property situated in Jawaharnagar to the first respondent. That, therefore, the bills are legally and validly issued.

So far the issue regarding notified area is concerned, the first respondent has contended that the said issue is pending before this Court in another matter viz Special Civil Application No.4663 of 1987 and therefore the petitioner is still liable to pay tax on the said property. That, anyway, the petitioner has to pay property tax and there is no merit in the present Special Civil Application and consequently it may be dismissed with costs.

When the matter was posted for hearing, some time was granted to the Learned Advocate for the parties to get ready in this old matter. Therefore, the matter was attended by M/s.K.S.Nanavati, Jayant Patel and K.G. Sheth for the parties respectively. I have heard them at length.

Now the point has come up in somewhat narrow compass so far the issue of notified area is concerned. It is found from the notification at Annexure "I" that under the provision of Section 16 of the Gujarat Industrial Development Act, 1962, certain area of village Chhani has been declared to be notified area. It is an admitted position that the land in question is within the area which has been declared to be a notified area by the aforesaid notification placed at Annexure "I" to the petition which is dated 21st August, 1987.

It is true that the aforesaid notification was challenged by the first respondent and the Sabhapati of the first respondent before this Court by way of Special Civil Application No.4663/87. However, a copy of the judgement in the aforesaid matter has been shown by the Learned Advocate for the petitioner. It is dated 11th February, 2000. There the first respondent has challenged the aforesaid notification declaring the aforesaid area to be notified area in exercise of the powers under Section 16 of the Gujarat Industrial Development Act, 1962. While so doing the State of Gujarat, that is the second respondent, has also considered the provisions contained in Chapter XVI-A of the Gujarat Municipalities Act, 1963 and other provisions of that Act. The notification also states that the provisions of the Gujarat Panchayat Act, 1961 which has been in force in the industrial area shall cease to apply.

It is, therefore, very clear that on and from the date of the notification i.e. 21-8-1987, the area covered by this notification would not be governed by the provision of the Panchayat Act.

The said notification was challenged in the aforesaid matter and by judgement and order dated 11th February, 2000, this Court (Coram: Hon'ble Chief Justice and Hon'ble Justice Mr.C.K. Thakkar as His Lordship then was) dismissed the said petition of the first respondent and the rule has been discharged. Therefore, there is no challenge to the said notification in existence as on today.

Neither the petitioner, nor the respondent is in a position to say if or not the S.L.P. has been filed by the first respondent before the Hon'ble Supreme Court. There is nothing on record to show or suggest anything about the same. Anyway, the position is very clear that on and from 21st August, 1987, the property in question is within the notified area and therefore the provision contained in the Panchayat Act does not apply to this property. The property tax is levied and collected by the Panchayat in exercise of the powers conferred on it by the Panchayat Act. Therefore, the Panchayat can levy and collect property tax in respect of property situated in Panchayat Area under the provisions of the Panchayat Act. Therefore, the area to which the Panchayat does not apply, the Panchayat cannot exercise any power and therefore, the Panchayat cannot levy or collect tax in respect of the property which is situated in an area where Panchayat Act does not apply. In the present case, since the aforesaid notification of 21st August, 1987, the property of the petitioner cannot be said to be situated in the Panchayat area. In other words, the Panchayat Act does not apply to the petitioner's property w.e.f. 21st August, 1987. Therefore, the first respondent can naturally not levy or collect property tax under the Panchayat Act from the petitioner on and from 21st August, 1987. Therefore, the petitioner is entitled to succeed on this aspect of the case. I am of a clear decision that the first respondent cannot claim or collect property tax in respect of this property of the petitioner on and from 21st August, 1987, since from this date the Act does not apply to the property in question. and hence property tax cannot be collected on this property by the first respondent.

This is of course subject to the ultimate decision of the Hon'ble Supreme Court, if the aforesaid

matter is carried there, but so long as the judgement of this Court in aforesaid matter stands, the first respondent cannot levy or collect property tax in respect of the property of the petitioner to which the Panchayat Act has ceased to apply w.e.f. 21st August, 1987.

Then we can turn to the second point. The petitioner has contended that a new Jawaharnagar has been constituted under the provision of Bombay Land Revenue Code and therefore, it is a separate village and therefore the first respondent cannot levy or collect tax on the property situated in a different village.

Admittedly a new village has been constituted under the Bombay Land Revenue Code. However, it is a revenue village and not a Panchayat village under the Panchayat Act. It has been brought out during the argument by the Learned Advocates for the parties that though a new revenue village namely Jawaharnagar has been constituted under the provision of Bombay Land Revenue Code, the State Government never constituted a separate Gram or Village under the provisions of the Panchayat Act, with the result that though Jawaharnagar is a separate and independent revenue village, it does not have its separate Panchayat, but the area of Jawaharnagar has continued to be a part and parcel of the first respondent. Therefore, the constitution of Jawaharnagar as a separate revenue village, has no bearing or effact on the authority of the first respondent to levy and collect property tax in respect of the property situated in Jawaharnagar. Consequently, the properties situated in Jawaharnagar will continue to be taxed for the purpose of property tax by the first respondent, since Jawaharnagar is not a separate Gram within the meaning of Section 9(2) of the Panchayat Act. This point is covered in a decision of Bhalod Gram Panchayat Vs State of Gujarat reported in 1986 (1) GLR, 247. There this Court has laid down that where the exercise of powers under Section 7(A) of the Bombay Land Revenue Code is likely to affect the limits of the local area of any Panchayat or Panchayats, the power cannot be exercised dehors Section 9(2) of the Panchayat Act, but can only be exercised conjointly with the latter provision. This would mean that under Section 7(A) of the Bombay Land Revenue Code the limits of revenue village can be altered, but if it is not done in the exercise of powers under Section 9(2) of the Panchayat Act, then in that event, the changed area will have no bearing on the Panchayat and the said area will continue to be under the Panchayat area. Same way, though a new Jawaharnagar was constituted under Section 7(A) of Bombay Land Revenue Code, 1879, there was

no new village within the meaning of Section 9(2) of the Panchayat Act. Therefore, Jawaharnagar continues to be a part and parcel of the first respondent, despite the notification under Section 7(A) of the said Code.

I am, therefore, of the view that the petitioner is not right in arguing that the petitioner is not liable to pay property tax to the first respondent, since the property is situated in the newly constituted revenue village, namely Jawaharnagar. I am of the view that since Jawaharnagar has not been notified as a separate Gram under Section 9(2) of the Panchayat Act, it continues to be a part and parcel of the first respondent and therefore, the first respondent was entitled and authorised to levy and collect property tax in respect of the property situated in Jawaharnagar.

Admittedly the property of the petitioner has been situated in Jawaharnagar and therefore, the petitioner was liable to pay property tax to the first respondent upto 21st August, 1987, since the property continues to be situated within Panchayat area of the first respondent till that date. Therefore, the petitioner must pay property tax so far it relates to the period immeidately before 21-8-1987.

The third point submitted on behalf of the petitioner is that the tax imposed is excessive. Now under the provision of the Panchayat Act, a Panchayat can levy and collect property tax. So far as the quantum of amount of tax is concerned, provisions are made for appeals etc. Objections are required to be filed. They are required to be heard and if the property owners/occupants have any dispute with respect to the decision of the Panchayat, then provisions for appeals have been made. Then the occupants get a right of production of evidence. Therea, there is effective remedy under the law. Thereafter, there is alternative efficacious remedy of statutory appeal before Judicial Tribunals. In that view of the matter, the petitioner cannot challenge quantum of amount of tax before this Court directly under the extraordinary powers and jurisdiction under Sections 226 and 227 of the Constitution of India. I am of a clear decision that the quantum of amount of property tax cannot be challenged directly before this Court without going through the procedure of filing objections and statutory appeal before Judicial Tribunals, etc. The petitioner, therefore, cannot succeed on this aspect of the case.

The net result of the aforesaid discussion is

that the petitioner cannot challenge the quantum of amount of tax since the petitioner is not proved to have undergone the aforesaid statutory procedure of filing objections and appeals.

The petitioner has failed to prove that Jawaharnagar was a separately constituted Gram within the meaning of Section 9(2) of the Panchayat Act in 1966. Therefore, the petitioner cannot claim that the petitioner is not liable to pay property tax to the first respondent from 1966 to 1987. The property of the petitioner has been situated in Jawaharnagar and this area has been declared to be a notified area on and from 21st August, 1987 as per the terms of notification at Page 51 at Annexure (I). Therefore, on and from 21st August, 1987 the Panchayat Act has ceased to apply to this area. Therefore, the first respondent cannot levy and collect property tax in respect of the area to which Panchayat Act does not apply w.e.f. 21st August, 1987. Therefore, to this extent the petitioner is entitled to succeed in this petition. I may make an observation that this Court had passed a specific order on 15th January, 1991 that respondent no.2 State of Gujarat will file an affidavit and shall state whether the petitioner company is situated within the limits of any Panchayat. Though nine years have gone, the second respondent i.e. State of Gujarat has not filed affidavit before this Court on the aforesaid subject. However, we have got the order of Additional Development Commissioner at Annexure "K" on Page 75. It is dated 13-7-1990. There the said authority has clearly observed that the aforesaid land is not situated outside the Panchayat area of the first respondent. Moreover, the Additional Development Commissioner is the authority to decide issue on the above subject. In fact, it has been argued that the Additional Development Commissioner has jurisdiction and authority in the matter of constitution of new villages under the Panchayat Act. Therefore, when the Additional Development Commissioner himself has decided that the property of the petitioner has not been situated outside the limits of the first respondent, then it can be said indirectly that there is the decision of the Government that the said area does not fall outside the limits of the first respondent. The said area was within the limits of the first respondent and therefore, the property situated in this area was liable to be taxed for the purpose of property tax by the first respondent and therefore, the petitioner was liable to pay property tax to the first respondent upto 21st August, 1987. It has already been discussed and observed herein above that the property of the petitioner is situated in Jawaharnagar

which continued to be the part and parcel of respondent no.1 Panchayat. Therefore, want of affidavit of respondent no.2 would not affect the merits of the case.

In aforesaid view of the matter, this petition is partly allowed and it is hereby directed that the first respondent shall not be entitled to levy or collect property tax from the petitioner in respect of the properties of the petitioner situated in Jawaharnagar on and from 21st August, 1987 i.e. the date on which the said area has been declared to be notified area under the provisions of Section 16 of the Gujarat Industrial Development Act, 1962.

If any amount of property tax has been paid by the petitioner to the first respondent, then the petitioner shall be entitled to the refund of the said amount of the property tax for the period subsequent to 21st August, 1987.

The petitioner is not entitled to the remaining prayers and that part of the petition is ordered to be dismissed. Rule is made absolute to the extent indicated above. There shall be no order as to costs.

11-8-2000 (D.P. Buch, J.)

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